

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D. C.

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JUN 28 1991

In re Application of

THE FIDELIO GROUP, INC.

For a construction permit  
for a new FM station on  
Channel 282B (104.3 MHz)  
New York, New York

FM EXAMINERS

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

File No. BPH-910502MQ

File

To: Chief, Mass Media Bureau

**MOTION FOR LEAVE TO FILE RESPONSE**

The Fidelio Group, Inc. ("Fidelio"), by its attorneys, hereby requests leave to file its Response to GAF Broadcasting Company, Inc.'s ("GAF") "Reply to Opposition to Request For Return of Application as Unacceptable for Filing," dated June 24, 1991 ("GAF Reply").

GAF's initial "Request For Return of Application as Unacceptable for Filing," dated May 30, 1991 ("GAF Request") raised only one argument -- that Fidelio's Application was untimely because it was not filed on May 1, 1991. As noted by Fidelio in its June 13, 1991 Opposition ("Opposition"), GAF feigned ignorance of the Commission's extra day policy, <sup>1/</sup> and cited only to irrelevant pre-Pittsburgh filing cases. See Opposition at 3.

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<sup>1/</sup> Memorandum Opinion and Order, Establishment of a Fee Collection Program, 5 FCC Rcd 3558 (1990) ("MO&O"); Public Notice, "Filing of Time Critical, Feeable Applications" (released May 9, 1990).

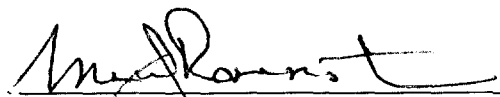
In its Reply, GAF raises the altogether new argument that Fidelio's Application was not "time critical." Moreover, GAF's Reply for the first time expressly argues that the Commission's back-up procedures for Pittsburgh filings are mandatory, rather than permissive.

GAF's pleading strategy disserves both the Commission and Fidelio. Not only did GAF attempt to mislead the Commission by failing to cite to the dispositive MO&O in its Request, but GAF obviously chose to raise new issues in its Reply in an effort to deny Fidelio the right to respond. GAF's tactics must not be condoned by the Commission. Consequently, Fidelio should be granted leave to file its response to address issues purposely and improperly raised by GAF for the first time in its Reply.

For the foregoing reasons, leave should be granted for the filing of Fidelio's Response.

Respectfully submitted,

THE FIDELIO GROUP, INC.

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